No. 7, Original

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF OF THE UNITED STATES IN OPPOSITION TO THE "MOTION OF DEFENDANT, INTERPOSING PLEA TO THE JURISDICTION AND OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY DECREE"

HERBERT BROWNELL, Jr.,
Attorney General,
SIMON E. SOBELOFF,
Solicitor General,
J. LEE RANKIN,
Assistant Attorney General,
OSCAR H. DAVIS,
JOHN F. DAVIS,
Assistants to the Solicitor General,
GEORGE S. SWARTH,
Attorney,
Department of Justice, Washington 25, D. C.

INDEX

CITATIONS

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STATUTE INVOLVED

Relevant portions of the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (Supp. II) 1301–1315, are set out in the Appendix to the Brief of the United States in support of its motion for modification of the decree, at pages 46–49.

QUESTIONS PRESENTED

1. Whether this Court, in a pending suit in equity, has jurisdiction to limit the scope of a permanent injunction issued by it in the same suit at a previous term, so as to conform to new legislation.

2. Whether this Court should modify a permanent injunction previously entered by it in

this suit, where a subsequent act of Congress permits the defendant to do part of the things forbidden by the injunction and relieves the defendant from doing part of the things required by the injunction.

STATEMENT

On December 11, 1950, this Court entered its decree in this case, declaring the United States rather than the State of Louisiana to be entitled to the submerged lands and minerals seaward of the low-water mark and outer limit of inland waters on the Louisiana coast, permanently enjoining the State from conducting mineral operations therein, and requiring it to account to the United States for moneys derived therefrom after June 5, 1950. 340 U. S. 899. No accounting has yet been made. The Submerged Lands Act, approved May 22, 1953, gave to all coastal States the submerged lands to the limit of their boundaries as they existed when they entered the Union, or as approved by Congress, but not more than three leagues into the Gulf of Mexico in any case. 67 Stat. 29, 43 U. S. C. (Supp. II) 1301–1315. On May 19, 1955, the United States filed its motion herein to limit the decree and injunction previously issued, to conform to the Submerged Lands Act. Louisiana challenges the jurisdiction of the Court to do so in this proceeding, asserting that the motion states a new cause of action and raises issues not germane to the suit.

ARGUMENT

I

THIS COURT HAS CONTINUING JURISDICTION TO MODIFY ITS INJUNCTION TO MEET NEW CIRCUMSTANCES

Louisiana argues (Brief, pp. 17–20) that this Court has no jurisdiction in this term to modify its injunction which was issued in 1950. Insofar as this argument is based on the assumption that federal courts lose jurisdiction to modify their judgments at the end of the term in which they are issued, that old common law rule is abolished by 28 U. S. C. 452. See also Rule 6 (c) of the Federal Rules of Civil Procedure, made applicable to original actions, if considered appropriate, by Rule 9, paragraph 2 of the Revised Rules of the Supreme Court.

Moreover, the cases that Louisiana cites involved attempts either to modify judgments in actions at law,[1] to modify or justify violation of final injunctions on the basis of reconsideration of facts which existed when the injunctions were issued,[2] or to enlarge an injunction so as to enjoin additional acts beyond those originally covered.[3] None of them are relevant to a situation

[1] *Bronson* v. *Schulten*, 104 U. S. 410; *Barrell* v. *Tilton*, 119 U. S. 637; *Realty Co.* v. *Montgomery*, 284 U. S. 547.

[2] *United States* v. *Swift & Co.*, 286 U. S. 106; *L. E. Waterman Co.* v. *Standard Drug Co.*, 202 Fed. 167 (C. A. 6).

[3] *Prang Co.* v. *American Crayon Co.*, 58 F. 2d 715 (C. A. 3).

where changes in the law or facts after issuance of a permanent injunction have so altered the situation that the injunction as it stands is too broad and should be reduced in scope.

It is well settled that a court of equity, having issued a permanent injunction, has continuing jurisdiction to modify it when changed circumstances so require. "Familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted." *Milk Wagon Drivers Union* v. *Meadowmoor Co.*, 312 U. S. 287, 298. In *United States* v. *Swift & Co.*, 286 U. S. 106, one of the cases cited by Louisiana, this Court said, at page 114:

> Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.[4]

Relief was denied in that case because the circumstances were not shown to be different from

[4] The Court went on to distinguish cases where there were decrees based on unchanging facts, and Louisiana seeks to bring this case within the rule applicable to such cases (Brief, p. 20). However, the Submerged Lands Act has materially changed the facts on which the present decree rested, as the State must admit, and as it does in fact affirmatively assert (Brief, p. 21).

what they were when the injunction was issued. Federal courts have consistently recognized this continuing power to modify injunctions to meet changed conditions. *Food Fair Stores* v. *Food Fair,* 177 F. 2d 177, 186 (C. A. 1); *Coca-Cola Co.* v. *Standard Bottling Co.,* 138 F. 2d 788, 789–790 (C. A. 10); *Berman* v. *Denver Tramway Corp.,* 197 F. 2d 946, 950 (C. A. 10); *Tobin* v. *Alma Mills,* 192 F. 2d 133, 136 (C. A. 4), certiorari denied, 343 U. S. 933; *Grand Union Equipment Co.* v. *Lippner,* 167 F. 2d 958, 960 (C. A. 2).

A subsequent change in the law, making legal the acts enjoined, has been recognized as such a change in circumstances as to make it proper to modify or vacate an injunction. "Even though a decree granting preventive injunctive relief appears on its face to be permanent, a court of equity has inherent power to vacate and set it aside if subsequent to its entry the law has been so changed that the continuance of the injunction is unjust, inequitable or unwarranted." *City and County of Denver* v. *Denver Tramway Corp.,* 187 F. 2d 410, 417 (C. A. 10). An "injunction will be vacated or modified where the law has been changed making acts enjoined legal." *Western Union Tel. Co.* v. *International Brotherhood,* 133 F. 2d 955, 957 (C. A. 7).

In the present case, the decree issued by this Court on December 11, 1950, provides (340 U. S. 899):

1. The United States is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters * * *.

2. The State of Louisiana, its privies, assigns, lessees, and other persons claiming under it, are hereby enjoined from carrying on any activities upon or in the submerged area described in paragraph 1 hereof for the purpose of taking or removing therefrom any petroleum, gas, or other valuable mineral products * * *.

3. The United States is entitled to a true, full, and accurate accounting from the State of Louisiana of all or any part of the sums of money derived by the State from the area described in paragraph 1 hereof subsequent to June 5, 1950, which are properly owing to the United States under the opinion entered in this case on June 5, 1950, this decree, and the applicable principles of law.

4. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

Section 3 of the Submerged Lands Act (67 Stat. 29, 30, 43 U. S. C. 1311) provides:

(a) It is hereby determined and declared to be in the public interest that (1) title

> to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters * * * be, and they are hereby * * * recognized, confirmed, established, and vested in and assigned to the respective States * * *.
>
> (b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters * * *.

It is apparent that these provisions of the Submerged Lands Act constituted a change in the law, entitling Louisiana to do what the injunction herein forbids, and relieving Louisiana from the necessity for making the accounting required by the decree herein, insofar as the decree and injunction relate to land within the State boundary as that term is defined in Section 2 (b) of the Act.[5] Since, contrary to Louisiana's

[5] "The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved

assertion (Motion, p. 3; Brief, p. 13), the accounting required by the decree has not yet been made, and since the injunction against operations in the submerged lands is a continuing one, it is appropriate, under the authorities cited above, that the Court exercise its continuing jurisdiction and modify the decree and injunction to conform to the changed law.

II

THE MOTION OF THE UNITED STATES DOES NOT PRESENT AN INDEPENDENT CLAIM OR DEMAND

Louisiana also asserts (Brief, p. 15) that the Government's motion to modify the injunction presents a separate and independent claim or demand. But that is not the case. On the contrary, our motion presents a reduction of a claim previously made and sustained by this Court. In the case of *Prang Co.* v. *American Crayon Co.*, 58 F. 2d 715 (C. A. 3), cited by Louisiana (Brief pp. 17–18), it was sought to expand the original injunction so as to forbid certain acts, of a sort begun only after the injunction was issued, which were not covered by the original injunction. The court declined to do so. But in the present case

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by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."

the object is not to expand the decree but to contract it, because a change in the law has made it too broad. It is not perceived how this can constitute a "new claim" by the United States or be not germane to the original issue. As pointed out above, it is precisely because new circumstances have arisen that the Court has jurisdiction to modify the injunction. *United States* v. *Swift & Co.*, 286 U. S. 106, 119. Those new circumstances necessarily bring into the case new elements—in this case, the width of the marginal sea within the State boundary—which were originally not material; but it by no means follows that the cause of action is being expanded or a new cause of action interjected into the suit. Rather, the old cause of action is being reduced in its scope.[6]

III

THERE IS NO RIGHT TO A JURY TRIAL ON THE ISSUES RAISED BY THE GOVERNMENT'S MOTION

Louisiana argues (Brief, pp. 15–17) that the Government's motion is designed to determine the State boundary, and that a proceeding to determine a boundary is an action at law, in which

[6] Because this is a mere step in a pending equity suit, Louisiana's objection that the United States failed to apply for leave to file its motion is not well taken. Similarly, Louisiana's attempt to appear specially must be overruled. A party whose general appearance has been entered and not withdrawn cannot enter a special appearance. *Brady* v. *Yount*, 42 Wash. 2d 697, 258 P. 2d 458 (1953).

there is a right to a jury trial. An action merely to determine a boundary may certainly be maintained at law, and perhaps only at law when there are no special circumstances requiring the intervention of equity. But it is also true that the determination of a boundary is within the competence of a court of equity when the question arises in an equity suit, or particular circumstances make the intervention of equity appropriate. In *Fowler* v. *Lindsey*, 3 Dall. 411, 413, Mr. Justice Washington said:

> I will not say, that a state could sue at law for such an incorporeal right as that of sovereignty and jurisdiction; but even if a court of law would not afford a remedy, I can see no reason why a remedy should not be obtained in a court of equity. The state of New York might, I think, file a bill against the state of Connecticut, praying to be quieted as to the boundaries of the disputed territory; and this court, in order to effectuate justice, might appoint commissioners to ascertain and report those boundaries.

That statement was referred to with approval by this Court in *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 744. In that case, the Court entertained a bill by Rhode Island against Massachusetts for the settlement of their common boundary. Of the procedure, it said (12 Pet. at 734):

> We think, it does not require reason or precedent, to show that we may ascertain

> facts, with or without a jury, at our discretion, as the circuit courts, and all others do, in the ordinary course of equity * * *.
>
> No court acts differently in deciding on boundary between states, than on lines between separate tracts of land; if there is uncertainty where the line is, if there is a confusion of boundaries by the nature of interlocking grants, the obliteration of marks, the intermixing of possession under different proprietors, the effects of accident, fraud, or time, or other kindred causes, it is a case appropriate to equity. An issue at law is directed, a commission of boundary awarded; or, if the court are satisfied, without either, they decree what and where the boundary of a farm, a manor, province, or a state, is and shall be.

After extended discussion of the jurisdiction to settle boundaries, the court said (12 Pet. at 744):

> * * * it will appear, that the course of the court on the subject of boundary, has been in accordance with all the foregoing rules; let the question arise as it may, in a case in equity, or a case in law, of a civil or criminal nature; and whether it affects the rights of individuals, of states, or the United States, and depends on charters, laws, treaties, compacts or cessions which relate to boundary.

These principles were again applied in *Simmons Creek Coal Company* v. *Doran,* 142 U. S. 417, a

suit in equity in which a mistaken boundary was corrected.[7]

At the main stage of the present case, this Court rejected Louisiana's request for a jury, saying (339 U. S. 699, 706):

> Louisiana's motion for a jury trial is denied. We need not examine it beyond noting that this is an equity action for an injunction and accounting. The Seventh Amendment and the statute, assuming they extend to cases under our original jurisdiction, are applicable only to actions at law.

This is still a suit in equity. As shown above, the Government's motion to modify the decree is a proper incident of this suit. It follows that the constitutional and statutory provisions for jury trial are still inapplicable.

IV

IT IS APPROPRIATE AND NECESSARY THAT THE DECREE BE MODIFIED TO CONFORM TO THE SUBMERGED LANDS ACT

Another of Louisiana's contentions (Brief, pp. 20–23) is that it is unnecessary for this Court to modify its decree, since the Submerged Lands Act has already had the effect of modifying it.

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[7] Louisiana cites 11 C. J. S. 683 and 9 C. J. 266–267 for the proposition that the determination of the boundary is a legal question. Br. 15, fn. 3. But see 11 C. J. S. 684 (Boundaries, § 99), 9. C. J. 266 (Boundaries, § 281).

Three cases are cited in support of that contention (Brief, p. 21, fn. 7), but none of them supports it in fact. *Pennsylvania* v. *Wheeling and Belmont Bridge Co.,* 18 How. 421, held that where the thing enjoined had subsequently been authorized by Congress, the Court in its discretion would not issue an attachment for contempt, where the violation of the injunction was after the congressional action. That was not a holding that there was not technically a contempt, and certainly was not a holding that the Court would not vacate its injunction to eliminate the conflict between its terms and the congressional authorization.

The case of *The Clinton Bridge* [*Gray* v. *Chicago, I. & N. R. Co.*], 10 Wall. 454, held that a pending suit to enjoin construction of a bridge would be dismissed, where after the suit was begun Congress authorized construction of the bridge. Obviously, that does not even remotely indicate that a court should retain an outmoded injunction on its records rather than vacating or modifying it to conform to a change in the law.

Hodges v. *Snyder,* 261 U. S. 600, gives even less support to Louisiana's position, being in fact directly opposed to it. There the trial court refused to set aside its injunction after the legislature authorized the enjoined action. The state supreme court held such refusal to be error, and reversed, ordering the injunction to be vacated (except as to the award of costs, the right to

which had become vested). This Court affirmed that judgment, ordering the injunction to be vacated to conform to the new legislation. That is precisely what the United States seeks by its motion here, except that the new legislation requires only that the injunction be modified, rather than vacated entirely.

While this Court in its discretion has declined to issue an attachment for contempt, where the action taken by the defendant was authorized by Congress after being enjoined, *Pennsylvania* v. *Wheeling and Belmont Bridge Co.*, 18 How. 421, *supra,* it is clear that violation of a continuing injunction is technically a contempt, and it has been so treated under similar circumstances. The proper action for a party to take is not to decide for himself what effect a subsequent statute has had on an injunction, but to apply to the court which issued it to make an appropriate modification. Thus, in *Yanish* v. *Barber,* 211 F. 2d 467, 470 (C. A. 9), the court said:

> * * * the appropriate procedure for appellee to pursue as a public officer would have been to move for a modification or vacation of the injunction. * * * It was not for him, any more than it would be for a private individual in like circumstances, to decide that an injunctive order running against him had been rendered nugatory by subsequent legislation. His course should be to obey it unless and until

> set aside in proceedings brought for that purpose.

Similarly, in *Bowers* v. *Von Schmidt,* 87 Fed. 293 (C. C. N. D. Cal.), where the defendant, relying on the plaintiff's supposed consent, sold property which he had been enjoined from selling, the court said (87 Fed. at 297):

> * * * we have here no order of another court having jurisdiction, we will say, over the sale of the property, but what is claimed to be the implied consent of the patentee. This is clearly not sufficient, under the circumstances of this case. If Von Schmidt believed he had the consent of the patentee to make the sale, he should have come to this court, and obtained an order modifying the interlocutory decree in that particular.

To the same effect was *Muller* v. *Henry,* 17 Fed. Cas. No. 9,916 (C. C. D. Cal.), holding it contempt of court to do street grading as authorized by the city authorities, without first securing modification of a previous injunction against such grading. The court said (17 Fed. Cas. at 981):

> The injunction should be obeyed until it is dissolved by the authority which granted it. Undoubtedly, if a proper showing were made, if the court were satisfied that the injunction should be dissolved, it would be dissolved; but until that is done, the party himself has no right to determine the fact that he has authority to proceed,

> in violation of the injunction of this court, to perform the acts which have been prohibited.

Certainly it does not lie with Louisiana to insist that this Court maintain against it an injunction broader in its scope than the present state of the law justifies.

In the present case, modification of the injunction is not only wholly appropriate but is in fact urgently necessary. The parties are in wide disagreement as to the extent to which the decree has been affected by the Submerged Lands Act, and this disagreement is causing serious difficulties in the development of the disputed area and serious embarrassment to oil companies desiring to operate there. Louisiana claims an historic boundary of three leagues; the United States asserts that the boundary existing at the time Louisiana entered the Union was not more than three miles, if that. Contrary to Louisiana's assertion (Motion, p. 3; Brief, p. 13), the accounting required by the decree of this Court has not yet been made, nor can that well be done until it is known to what area it should now relate, in view of the Submerged Lands Act. Similarly, until that area is identified, it cannot be known where the State is now entitled to conduct the activities enjoined by the decree. It seems more appropriate, particularly in view of the sovereign status of Lousiana, that these ques-

tions be resolved by modification of the decree rather than by a citation for contempt in disobeying the injunction as it now stands.

V

THE REQUESTED MODIFICATION OF THE DECREE WILL NOT BE INEFFECTUAL

Louisiana urges (Brief, pp. 23–24) that the requested modification of the decree will be ineffectual, because it will not wholly dispose of the controversy between the parties. However, it will dispose of the controversy to precisely the same extent as did the original decree, leaving for determination the same question that was left open by the original decree, that is, the geographical location of the low-water mark and outer limit of inland waters. Ascertaining the exact physical location of that line will be neither more nor less necessary under the modified decree, where it will be a base from which to measure a stated distance seaward, than it was under the original decree, where it was itself the dividing line between federal and state ownership. In *United States* v. *California,* 332 U. S. 19, 26, where a similar decree was entered, this Court said in rejecting a similar objection:

> We may assume that location of the exact coastal line will involve many complexities and difficulties. But that does not make this any the less a justiciable

controversy. Certainly demarcation of the boundary is not an impossibility. Despite difficulties this Court has previously adjudicated controversies concerning submerged land boundaries. See *New Jersey* v. *Delaware,* 291 U. S. 361, 295 U. S. 694; *Borax, Ltd.* v. *Los Angeles,* 296 U. S. 10, 21–27; *Oklahoma* v. *Texas,* 256 U. S. 70, 602. And there is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. *Oklahoma* v. *Texas,* 258 U. S. 574, 582. Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. See *e. g. Oklahoma* v. *Texas,* 256 U. S. 602, 608–609; 260 U. S. 606, 625, 261 U. S. 340.

CONCLUSION

For the foregoing reasons, it is submitted that Louisiana's motion and plea to jurisdiction should be denied without further briefs or oral argument and the State required to respond within 30 days to the motion of the United States to modify the decree.

Respectfully submitted.

HERBERT BROWNELL, Jr.,
Attorney General.

SIMON E. SOBELOFF,
Solicitor General.

J. LEE RANKIN,
Assistant Attorney General.

OSCAR H. DAVIS,
JOHN F. DAVIS,
Assistants to the Solicitor General.

GEORGE S. SWARTH,
Attorney.

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